

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0169P
Sales Tax
Calendar Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a restaurant in Indiana. At audit, it was determined that the taxpayer failed to register and remit sales tax collected.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer requests that the penalty assessed be waived because it has no income with which to pay. Taxpayer states that it can begin making monthly payments of the original tax if the Department can settle the matter for penalty and interest.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to register with the Department and failed to remit sales tax collected as required. Taxpayer has not provided reasonable cause to allow the department to waive the penalty and the Department has no authority to waive interest.

FINDING

Taxpayer's protest is denied.